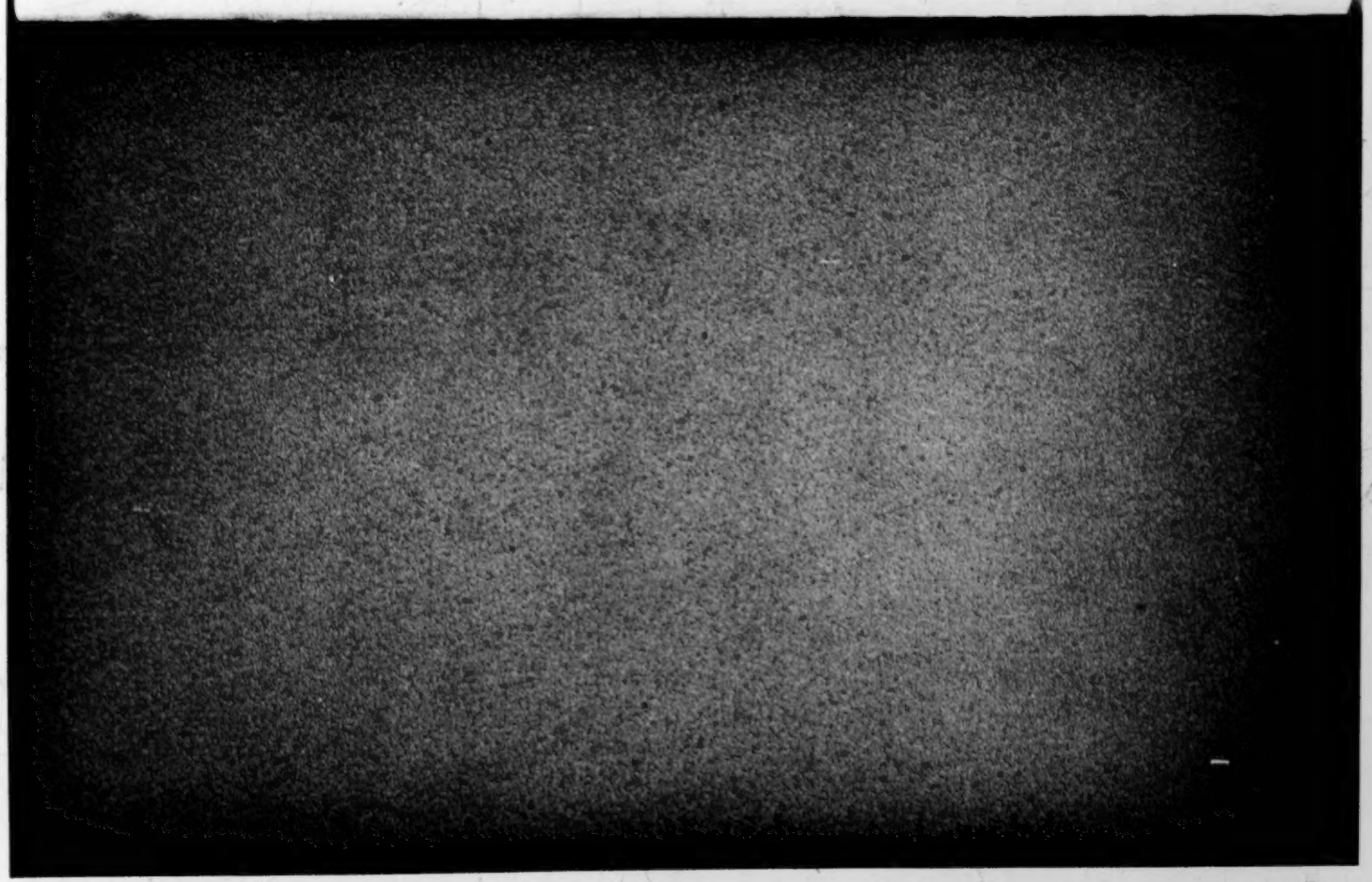

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-604

DONALD C. CASS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE PETITIONER

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February 21, 1974

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States District Court for the District of Montana dated June 20, 1972 has been published at 344 F.Supp. 550, and is printed as Appendix A of the Petition For Certiorari. The opinion of the Court of Appeals for the Ninth Circuit dated August 1, 1973 has been published at 483 F.2d 220 and is printed as Appendix B of the Petition For Certiorari.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 1, 1973. The Petition For Writ Of Certiorari was filed on October 5, 1973 and was granted on January 7, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

10 U.S.C. § 687(a) provides in pertinent part:

> "Non-Regulars: readjustment payment upon involuntary release from active duty
>
> (a) Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. . . . For the purposes of this subsection—
>
> (1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;
>
> (2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; * * * "

QUESTION PRESENTED

Whether an individual involuntarily released from active duty with the Armed Forces is entitled to readjustment pay in accordance with 10 U.S.C. § 687(a) where such individual has served more than four years and six months, but less than five years, of continuous active duty.

STATEMENT OF THE CASE

As a member of the United States Army Reserve, the Petitioner served a tour of active duty with the United States Army from July 16, 1966 to April 26, 1971 at which time the Petitioner was honorably and involuntarily released from active duty, having completed four (4) years, nine (9) months and thirteen (13) days of continuous active duty. (App. 6, 7). At the time of his involuntary release from active duty Petitioner had attained the rank of Captain and was receiving a base pay of $1,063.80 per month. (App. 6).

On April 20, 1971, Petitioner requested from the Department of the Army a lump-sum readjustment payment in the sum of $10,638.00 which was the amount of readjustment payment due calculated in accordance with the provisions of 10 U.S.C. § 687(a) under the assumption that Petitioner was eligible for a readjustment payment. Petitioner's request was denied. (App. 7).

Petitioner brought suit against the United States in the United States District Court for the District of Montana and for jurisdictional purposes waived all readjustment pay due in excess of $10,000. (App. 3, 4). The parties stipulated to the above recited facts and agreed that on the basis of these facts the District Court should determine whether Petitioner was en-

titled to the readjustment payment prayed for in accordance with 10 U.S.C. § 687(a). (App. 6-8).

The District Court relied upon the decision of the Court of Claims in *Schmid* v. *United States,* 436 F.2d 987 (Ct.Cl. 1971), *cert. denied,* 404 U.S. 951 in concluding that the rounding provision, 10 U.S.C. § 687 (a)(2), applies to both eligibility for and the computation of a readjustment payment. (App. 12). The District Court therefore entered judgment for Petitioner in the sum of $10,000. (App. 11).

The Government appealed the District Court's decision to the Court of Appeals for the Ninth Circuit. (App. 10). The Court of Appeals reversed, rejecting the interpretation of 10 U.S.C. § 687(a)(2) rendered by the Court of Claims in *Schmid* and relied upon by the District Court. The Court of Appeals concluded that the rounding provision of 10 U.S.C. § 687(a) applies only to the determination of the amount of readjustment payment, and not to the eligibility requirement for readjustment pay.

SUMMARY OF ARGUMENT

The language of the statute at issue in this case clearly indicates that the Petitioner's construction of the statute is the only reasonable construction. The plain and unambiguous meaning of 10 U.S.C. § 687(a) requires that the rounding provision as to portions of a year of active service is applicable to the determination of eligibility for readjustment pay as well as to the computation of the amount. The Court of Appeals reached a contrary construction because it failed to adhere to the plain meaning of the statute and because it failed to follow the established rules of statutory construction.

The Court of Appeals failed to recognize the plain meaning of § 687(a) because it isolated the language pertaining to eligibility—"at least five years of continuous active duty"—from the relevant rounding provision—"For the purposes of this subsection . . . a part of a year that is six months or more is counted as a whole year. . . ." The Court erroneously concluded that the rounding provision was not compatible with or functional with the eligibility clause when, in fact, it is clear that the two provisions are readily harmonized. Additionally, Congress has expressly adopted an identical rounding provision for the purpose of determining eligibility under a similar statute.

The Court of Appeals failed to recognize the plain meaning of § 687(a) because it resorted to legislative history as an aid to construction of the statute. Where the meaning of a statute is clear from the face of the statute, legislative history should not be examined to determine whether congressional intent conflicts with the plain meaning of the statute. This well-established rule of statutory construction was clearly violated by the Court of Appeals which attempted to demonstrate that Congress did not intend to change the language of the former readjustment pay statute by its codification in § 687(a). In any event, the legislative history of § 687(a) is not so conclusive as to dictate a disregard of the plain meaning of the statute.

ARGUMENT

I. The Plain Meaning of 10 U.S.C. § 687(a) Indicates that the Rounding Provision Applies to the Eligibility for, as Well as the Computation of, Readjustment Pay

The statute at issue in this case, 10 U.S.C. § 687(a), reads in pertinent part:

> "Non-Regulars: readjustment payments upon involuntary release from active duty.

(a) Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. * * * *For the purposes of this subsection*—

(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

(2) *a part of a year that is six months or more is counted as a whole year,* and a part of a year that is less than six months is disregarded; * * * " (emphasis added)

Petitioner submits that the plain, unequivocal and unambiguous language of this statute provides that four years nine months and thirteen days of continuous active duty must be equated to five years of continuous active duty for all purposes of the statute. Since Petitioner served this period of continuous active duty, he is eligible for readjustment pay, having served five years of continuous active duty within the meaning of the statute.

The statute clearly provides that "For the purposes of" the application of the statute "a part of a year that is six months or more is counted as a whole year." The prefatory phrase is not limited. There are clearly two

"purposes" for which this rounding provision may apply—first, in determining whether a reservist has completed "at least five *years* of continuous active duty", and is therefore eligible for readjustment pay, and secondly, in computing the "*years* of active service" for the purpose of determining the amount of readjustment pay. Nothing in the words of the statute indicates that § 687(a)(2) applies only to the computation of the amount of readjustment pay or that the procedure for computing the number of "years" of continuous active duty for determining eligibility is in any way different from the procedure for computing the number of "years" of active service for determining the amount of pay.

This Court need go no further than to determine the plain meaning of 10 U.S.C. § 687(a) in order to recognize the validity of the Petitioner's claim. *United States* v. *Sullivan,* 332 U.S. 689 (1948); *Caminetti* v. *United States,* 242 U.S. 470 (1917).

> "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise . . . ." 242 U.S. at 485.

Since the statute, on its face, entitles the Petitioner to a readjustment payment, the decision of the Court of Appeals should be reversed.

The view of the Court of Appeals that the language of 10 U.S.C. § 687(a) does not mean what it says was first presented by the Government before the Court of Claims in *Schmid* v. *United States,* 436 F.2d 987 (Ct. Cl. 1971), *cert. denied,* 404 U.S. 951. Lieutenant Schmid was the first individual to challenge in court the misapplication of 10 U.S.C. § 687(a) by the military departments which have denied readjustment pay to

those, like the Petitioner, who were released from active duty just short of five years of actual continuous active duty. The Court of Claims rejected the Government's attempt to circumvent the plain meaning of § 687(a), stating:

> "We find that the section is clear and unambiguous on its face and is susceptible, on its face, of only one interpretation . . . Congress imposed no express or implied limitation on the applicability of this rounding provision. The clear indication is that, in determining eligibility for readjustment pay and in computing the amount thereof, a period of 6 months or more is counted as a whole year." 436 F.2d at 989.

Other courts have construed 10 U.S.C. § 687(a) in complete agreement with the *Schmid* decision. In the case before this Court, the District Court of Montana, Helena Division, emphasized the language of the statute—"For the purposes of this subsection . . . a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded" and, relying upon *Schmid,* concluded that the rounding provision applies to both eligibility for and the computation of readjustment pay. *Cass* v. *United States,* 344 F. Supp. 550 (1972), *rev'd,* 483 F.2d 220 (9th Cir. 1973). An unpublished decision of the District Court for the Central District of California, which was also reversed by the decision below, was based upon the interpretation of the statute expressed in *Schmid.* See 483 F.2d at 221.

The Court of Appeals adopted a contrary construction of 10 U.S.C. § 687(a) because it went beyond the plain meaning of the statute and found that, *by implication,* the statute limited the rounding provisions

to the computation of the amount of benefits. The court isolated the clause of the statute which sets the minimal eligibility at "five years of continuous active service" and found that this clause is clear on its face and not subject to any interpretation other than a requirement for five complete and actual years of continuous active duty.

The eligibility clause of § 687(a) may be clear on its face, but it was error for the court not to recognize that one clause of a statute may be modified by another clause or by a definition within the statute. Words within a statute must be interpreted in accordance with the entire context of the statute. The eligibility clause of § 687(a) cannot be construed in isolation from the remaining language of the statute.

The statute at issue contains a specific provision regarding the term "year" for purposes of the use of that term within the statute. In the absence of an express restriction to the contrary, it must be assumed that a term is used throughout a statute in the same sense in which it is defined. *Pampanga Sugar Mills* v. *Trinidad,* 279 U.S. 211 (1929). Where a term is defined within a statute this definition will control over what a court would otherwise deem to be an alternative meaning of the term. *Thornton* v. *Comm'r,* 159 F.2d 578 (7th Cir. 1947). Moreover, a specific section of a statute qualifies and governs a general section dealing with the same subject matter. *Monte Vista Lodge* v. *Guardian Life Insurance Co. of America,* 384 F.2d 126 (9th Cir. 1967). The meaning of the term "year" throughout § 687(a) is therefore controlled by § 687(a)(2) since, as even the Court of Appeals recognized, § 687(a)(2) is not expressly restricted in its application. 483 F.2d at 222. The clause

relating to years of active service required for eligibility cannot be read in isolation from the rounding provision, and it was error for the Court of Appeals to do so.

The court below found that even if the eligibility requirement is not read in isolation from the rounding provision, the rounding provision conflicts with the clear preceding statement that five years of continuous active duty is required for eligibility. Petitioner contends that the Court of Appeals has looked for a conflict that does not exist. Different portions of a statute should not be held to be repugnant to each other if they can be reconciled. *Montgomery Charter Service* v. *Washington Metropolitan Area Transit Comm'n.*, 325 F.2d 230 (D.C. Cir. 1963). As the Petitioner has demonstrated, the clause relating to the eligibility requirement and the rounding provisions of § 687(a) are easily harmonized when it is recognized that the term "years" in the eligibility clause is expressly defined and modified by the rounding provisions of § 687(a)(2). The rounding provision is thus integrated into the eligibility requirement without any conflict.

The Court of Appeals was reluctant to follow the plain meaning of § 687(a) because it determined that the application of the rounding provision to the eligibility requirement would serve no useful purpose. 483 F.2d at 222. Since the rounding provision is relevant to the question of eligibility for readjustment pay only where a serviceman has served between four and one-half and five years of continuous active duty, the court could not find any apparent reason why Congress would adopt such a circuitous method to determine eligibility. However, independent evidence exists

that Congress has explicitly approved of this method of determining eligibility.

A statute similar to § 687(a) deals with retainer pay for enlisted members transferred to the fleet reserve. 10 U.S.C. § 6330.[1] That statute sets forth the number of years required for eligibility in a subsection separate from the provision regarding the computation of the payment. The rounding provision of § 6330 is identical to that of § 687(a)(2) and it is expressly applicable to each of the separate subsections dealing with eligibility and computation. There is no doubt that Congress intended for the rounding provision of § 6330 to apply in determining whether the requisite years for eligibility are met, even though the

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[1] § 6330 reads, in pertinent part:

Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) • • •

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer multiplied by the number of years of active service in the armed forces. • • •

(d) *For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.* • • • 10 U.S.C. § 6330. (Emphasis supplied).

rounding provision confers eligibility only upon enlisted members with active service between nineteen and one-half and twenty years of active service.

The application of the rounding provision to determine eligibility for purposes of 10 U.S.C. § 687(a), as construed by Petitioner, is no more circuitous or useless than the application of the rounding provision to determine eligibility for purposes of 10 U.S.C. § 6330. Where the meaning of a statute is clear, a court should not question the appropriateness of the statute's provisions and should not substitute the court's language for that expressed in the statute. *Helvering* v. *Hammel,* 311 U.S. 504 (1941); *Caminetti* v. *United States,* 242 U.S. 470 (1917); *Arkansas Valley Industries* v. *Freeman,* 415 F.2d 713 (8th Cir. 1969). The Court of Appeals construed the statute in terms of what the court felt Congress should have said rather than in terms of what the statute actually says. The court's opinion does not set forth sufficient reasons for rejecting the plain meaning of the statute as construed by the Petitioner and the Court of Claims in *Schmid, supra.*

II. Resort to the Legislative History of 10 U.S.C. § 687(a) as an Aid to Construction Is Unnecessary and Improper

The Court of Appeals resorted to the legislative history of 10 U.S.C. § 687(a) in order to buttress its interpretation of the statute. The Court's method of statutory construction violated the rule, well established by this Court, that where there is no ambiguity in a statute, resort to legislative history in order to construe the statute is unnecessary and improper. See *United States* v. *Oregon,* 366 U.S. 643 (1961); *Ex Parte Collett,* 337 U.S. 55 (1949); *Helvering* v. *City*

Bank Farmer's Trust Co., 296 U.S. 85 (1935); *United States* v. *Shreveport Grain and Elevator Co.*, 287 U.S. 77 (1932).

Even though the Court of Appeals found that the legislative history of 10 U.S.C. § 687(a) raises a doubt as to whether Congress intended to apply the rounding provision to the eligibility requirement, it was not proper for the court to controvert the plain meaning of the statute by seeking to show an inconsistent legislative intent. See *Sea-Land Service, Inc.* v. *Federal Maritime Comm'n.*, 404 F.2d 824 (D.C. Cir. 1968). The legislative history of a statute, such as committee reports, should not be used to create an ambiguity out of an otherwise clear and unequivocal statute. *Callahan* v. *United States*, 364 U.S. 587 (1961); *United States* v. *Rice*, 327 U.S. 742 (1946); *Helvering* v. *City Bank Co., supra; Railroad Comm'n. of Wisconsin* v. *Chicago, Burlington & Quincy R.R.*, 257 U.S. 563 (1922). This view was put forth by this Court most clearly in *United States* v. *Shreveport Grain and Elevator Company, supra.* In that case the Government attempted to rely upon the House and Senate reports to clarify the meaning of an act which the Government was urging the Court to construe in accordance with the Government's view. This Court rejected this attempt, stating:

> "In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its own terms. * * * Like other extrinsic aids to construction their use is to 'solve, but not to create, an ambiguity.' * * * 'If the language is clear, it is conclusive. There can be no construc-

tion where there is nothing to construe.'" 287 U.S. at 83. (Citations omitted).

There is no ambiguity within the four corners of 10 U.S.C. § 687(a). The statute clearly provides that the rounding provision is applicable to the determination of eligibility as well as to the computation of readjustment pay. The mere claim by the Government or the Court of Appeals that the statute is ambiguous should not persuade this Court to rely upon the legislative history of the statute. An inaccurate allegation of ambiguity does not justify the use of legislative history to vary the meaning of clear and unambiguous statutory language. *Montgomery Charter Service, Inc.* v. *Washington Metropolitan Area Transit Comm'n*, 325 F.2d 230 (D.C. Cir. 1963).

III. The Plain Meaning of a Codified Statute Should Not Be Altered by Resort to the Language of the Former Statute

The Court of Appeals found that the legislative history of § 687(a) requires that the language of a predecessor readjustment pay statute controls the meaning of the present statute. Petitioner contends that this mode of statutory construction was erroneous since it permitted the court to cast aside the plain meaning of the present statute.

The original statute providing for military readjustment payment expressly limited the rounding provision to the computation of the amount of the payment.[2]

[2] The original statute read in pertinent part:

"A member of a reserve component who is involuntarily released from active duty after the enactment of this section and after having completed immediately prior to such release at least five years of continuous active duty, except for a break in service of not more than thirty days . . . is entitled to a

In 1962 Congress codified this statute and simultaneously repealed the 1956 Act. Act of September 2, 1962, P.L. 87-651, 87th Cong., 76 Stat. 506. The codified section is the present 10 U.S.C. § 687(a). The codification changed the preface to the rounding provision from "For the purpose of computing the amount of readjustment payment. . . . " to "For the purposes of this subsection. . . . " As Petitioner has demonstrated, this change clearly makes the rounding provision applicable to the determination of eligibility for readjustment payment as well as the computation thereof. However, the Court of Appeals found that Congress did not intend to make such a change because the Senate report accompanying the new bill stated that the bill "is not intended to make any substantive change in the existing law." 483 F.2d at 222, quoting from S. Rep. No. 1876, 87th Cong., 2d Sess. (1962). Instead of referring to the plain meaning of the present statute, the Court of Appeals felt bound by the statement in the Senate Report to follow the language of the repealed 1956 Act in construing § 687(a). The decisions of this Court show that this method of construing § 687(a) was improper.

As early as 1880 this Court held that a court should not look to a predecessor statute in construing a statute which is unambiguous. In *United States* v. *Bowen*, 100 U.S. 508 (1880), the Government attempted to read

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lump-sum readjustment payment computed on the basis of one-half of one month's basic pay in the grade in which he is serving at the time of release from active duty for each year of active service ending at the close of the eighteenth year. *For the purpose of computing the amount of readjustment payment (1) a part of a year that is six months or more is counted as a whole year . . .*" (Emphasis added) Act of July 9, 1956, 70 Stat. 517, 50 U.S.C. § 1016(a) (1958 ed.).

a word out of a statute because the word caused a substantial change to occur in the predecessor statute. The Government argued that the court should consider the word as a mistake because the statute before the Court was merely a revision and consolidation of prior law and Congress had declared that there was no intent to change the prior law. This Court rejected the Government's approach, stating:

> "When the meaning is plain, the Courts cannot look to the statutes which have been revised to see if Congress erred in that revision . . ." 100 U.S. at 513.

Another case decided by this Court supports this view. *Continental Casualty Co.* v. *United States,* 314 U.S. 527 (1942) involved a revised statute, relating to the default of a bond, which substituted the word "party" for the word "parties" contained in the earlier statute. This Court had to determine whether the later statute applied only to the principal or to the principal and his surety. The Court followed the plain meaning of the current statute, restricting its application to only one "party," despite the indication that Congress did not intend to make any change by the revision.

> "The change to the singular in the Revised Statutes was made without any explanation of its purpose and indeed without the brackets or italics used to indicate a repeal or amendment. . . .The revised form, however, is to be accepted as correct. notwithstanding a possible discrepancy." 314 U.S. at 530.

Since the meaning of § 687(a) is clear on its face, it is not necessary or proper to determine whether Con-

gress intended to change the meaning of the 1956 Act by virtue of the 1962 codification thereof. If the Executive Branch of the Government believes that five actual years of active service should be required to receive readjustment pay, it should attempt to have § 687(a) amended by Congress rather than by an erroneous court construction of the statute.

IV. Assuming, Arguendo, that Resort to the Legislative History of § 687(a) Is Necessary, the Statute's Legislative History Is Not So Clear as to Dictate a Disregard of the Clear Meaning of the Statute

Even assuming that the Court of Appeals was justified in resorting to the legislative history of § 687(a), that court incorrectly concluded that Congress did not intend to broaden the eligibility requirements for readjustment pay by virtue of the 1962 codification of the 1956 act.

The 1956 statute originated as H.R. 9952. As it was passed by the House the bill read, in pertinent part:

> "SEC. 260. (a) A member of a reserve component who is involuntarily released from active duty after having completed immediately prior to such release at least 5 years of continuous active duty, except for breaks in service of not more than 30 days, as either an officer, warrant officer, or enlisted person, is entitled to a lump-sum readjustment payment computed on the basis of one-half of 1 month's basic pay in the grade in which he is serving at the time of release from active duty for each year of active service ending at the close of the 18th year. *For the purposes of this subsection, a part of a year that is 6 months or more is counted as a whole year, and a part of a year that is less than 6 months is disregarded.* * * *

(Emphasis supplied.) H.R. 9952, 84th Cong., 2d Sess. (1956).

The Senate then amended the House bill. The rounding provision of the House bill was amended in accordance with a recommendation contained in a letter, dated November 17, 1955, from the Comptroller General to Senator Russell, Chairman of the Committee on Armed Services, commenting on a similar bill. That letter stated, in pertinent part:

> "Although the language of subsection (a) of the bill seems to indicate that a minimum of 5 years' continuous active duty as an officer or warrant officer is necessary to qualify for a readjustment payment, the last sentence of that subsection appears to reduce the minimum qualifying service to 4 years and 6 months. Presumably the provision authorizing the counting of 6 months or more as a whole year was intended to apply only for the purpose of computing the amount of a lump-sum payment and not the quantum of qualifying service. If so, the language should be clarified, perhaps somewhat as follows:
>
> "For the purpose of computing the amount of the readjustment payment a fractional part of a year amounting to 6 months [or 183 days] or more shall be counted as a whole year and a shorter period shall be disregarded." 1956-2 U.S. Code Cong. & Adm. News 3068, 3070.

The rounding provision of section 687(a) contains the same language as the rounding provision of the original House readjustment pay bill set forth above. It is more reasonable to assume that the language of § 687(a) was intentionally drafted to conform to the original House bill than to assume that the identity of language is coincidental. This implies a legislative

intent to broaden the applicability of the rounding provision by virtue of the 1962 codification. The Court of Claims recognized this in *Schmid, supra*:

> "The restoration in section 687(a) of the language of H.R. 9952, that which the Comptroller viewed as reducing the minimum qualifying service to 4 years and 6 months, is, we think, a strong indication of congressional intent—far stronger than that on which the defendant relies. We do not mean to say that the legislative intent underlying section 687(a) is in accord with the clear meaning of the statutory words, only that the legislative history of that section does not so clearly evidence an intent inconsistent with the plain meaning of the statutory language as to enable us to depart from that plain meaning." 436 F.2d at 991.

The Court of Appeals reasoned that the statement in the 1962 Senate Report that Congress did not intend to make any substantive change in existing law evidenced Congressional intent not to broaden the rounding provision to include the determination of eligibility. This reasoning is clearly premised upon the assumption that a decrease in the eligibility requirement by six months constitutes a "substantive change" in the effect of the statute. However, it is apparent that the change in the minimum eligibility from five years to four years and six months was not a substantive change as far as Congress was concerned.

The purpose of the original readjustment pay statute was to assist involuntarily separated reserve officers in their re-establishment as civilians where such officers have reenlisted, after their initial obligation, with the idea of continuing their service. Congressman Brooks, an advocate for the original 1956 House read-

justment pay bill, explained the rationale for the eligibility requirement:

> "MR. BROOKS. That is correct. The reason for the 5 years, of course, is that a 3-year enlistment would require a reenlistment or, if you put it this way, a man who is in for 4 years will have to reenlist for an extended period. After he completes the first enlistment I think he intends to stay in the service and this encourages him to stay in the service as long as the service needs him." 102 Cong. Rec. 10118-19 (1956).

Therefore, the 1962 codification, as construed by the Petitioner, does not involve any substantive change to the intent of the 1956 Act. Congress recognized that a reserve officer on active duty for more than four and one-half years has expressed his desire to remain on active duty beyond his initial obligation. Congress intended to compensate officers in this category, such as the Petitioner, who make a commitment to the military and then are forced to abandon their military career and return to civilian life. The Petitioner with four years, nine months and thirteen days of active service is no less entitled to or in need of readjustment pay than is an officer separated after five actual years of active duty. A construction of § 687(a) as urged by the Government and adopted by the Court of Appeals will permit the Government to continue to separate reserve officers from active duty just prior to the completion of five years of actual active service by the officer, thereby avoiding the expense of a readjustment payment. This practice is contrary to the intent of Congress.

The statute at issue here was intended to benefit reserve officers, such as the Petitioner, and as a reme-

dial statute it should be construed in favor of the Petitioner. See *Peyton* v. *Rowe,* 391 U.S. 54 (1968); *Helvering* v. *Bliss,* 293 U.S. 144 (1934). Since the statute, on its face, clearly makes the Petitioner eligible for a readjustment payment, the Petitioner's claim should not be denied due to an alleged deficiency of draftsmanship or due to an inconclusive statement in a committee report.

CONCLUSION

For the reasons stated the judgment of the Ninth Circuit should be reversed, and the case remanded with instructions to affirm the decision of the district court.

Respectfully submitted,

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